IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1943.

No. 550.

GEORGE F. WOOD, GRACE SCHMIDT, H. GLEN WOOD, LEAFFIA HOWE, Petitioners,

vs.

FIRST NATIONAL BANK OF WOODLAWN, ILLINOIS, a National Banking Association, KINGWOOD OIL COMPANY, a Corporation, ALFRED J. WILLIAMS, MILDRED F. WILLIAMS, WALTER DUNCAN, E. A. OBERING, HELEN BAILEY OBERING, JAMES F. BREUIL; R. J. FRYER and R. F. RATCLIFFE, Co-Partners Doing Business Under the Name and Style of FRYER AND RATCLIFFE; R. J. FRYER, OLIVE LOUISE FRYER, R. F. RATCLIFFE, GRACE RATCLIFFE, ROY POWERS and NIOTAZE POWERS, Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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INDEX.

Cases Cited.

Statutes Cited.

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OPINION OF COURT BELOW.

The opinion of the Supreme Court of Illinois is officially reported in Vol. 383 of the Illinois Reports at Page 515 (383 Ill. 515), is also reported in 50 N. E. (2d) 830, and is included in the record filed herein (R. 371).

JURISDICTION.

The jurisdiction of this Court is invoked by petitioners under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925 [28 USCA, Sec. 344 (b)], on the grounds (as claimed by them in their petition for certiorari and supporting brief herein, but not supported by the record) that in the foreclosure proceeding attacked in the instant suit they had no notice of the filing of the Master's report of sale or of the contents thereof or of the execution and delivery of a certificate of purchase to the respondent bank, and no notice of or opportunity to be heard with respect to the entry of the order of June 10, 1941, approving and confirming said report of sale, and were thereby deprived of property without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and that their Federal claims were asserted in the trial court. It will be observed, however, that in petitioners' jurisdictional statement as to what they set up in their complaint in the trial court (p. 8 of petition for certiorari), they do not state that they raised any question about the order of January 10, 1938, approving the Master's report of conveyance filed on December 9, 1937 (Deft's. Ex. 22, R. 314, 188-190), which order constituted an implied approval and confirmation of the Master's report of sale which had been on file since October 1, 1936, and the Supreme Court of Illinois so held in its opinion in this cause (R. 371, 378). The fact is that in their complaint the petitioners did not even mention said order of January 10, 1938. That order was pleaded by respondents in their answers in the trial court (R. 37-38, 60-61), and in their replies to said answers petitioners merely denied that any order of court was entered approving the Master's report of conveyance (R. 102, 117-118). Petitioners did not allege in their complaint or in their replies any lack of notice of, or opportunity to be heard with respect to, said order of January 10, 1938.

Respondents respectfully submit that this Court is without jurisdiction to review this cause for the following reasons:

(1) Neither in the trial court nor in the Supreme Court of Illinois was there drawn in question the validity of a treaty or statute of the United States; nor was there drawn in question in this cause either in the trial court or in the Supreme Court of Illinois the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States.

(2) Neither in the trial court nor in the Supreme Court of Illinois was any title, right, privilege, or immunity specially set up or claimed by either party under the Federal Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States.

(3) No Federal question of any character was presented for decision or decided in this cause at any stage thereof, either in the trial court or in the Supreme Court of Illinois.

(4) This cause involves only questions of local law, the decision of which by the Supreme Court of Illinois is controlling; and, furthermore, the decision of the Supreme Court of Illinois in this cause is based solely on local laws not involving any constitutional questions.

STATEMENT OF THE CASE.

Petitioners' statement of the case contains several inaccuracies and omits many material facts, but in order to avoid unnecessary repetition, we shall make no statement of the case beyond what is necessary to correct the inaccuracies and omissions in the statement of petitioners.

Inaccuracies in Petitioners' Statement of the Case.

The statement on Page 2 of the petition for certiorari that "An effort was made to obtain service by publication on the petitioner, George F. Wood and wife," is misleading and tends to give the impression that the publication service was questionable or perhaps insufficient, whereas in fact it was perfectly regular and valid (R. 203-210, 188-190). At no stage of the case in the courts below did the petitioners controvert the fact that in the foreclosure suit the court had full and complete jurisdiction of all the parties thereto, including the petitioners herein, and of the subject matter of the action; nor was it disputed by petitioners that the decree of foreclosure was in all respects regular and valid.

The statement on Page 3 of the petition for certiorari that under Rule 7 of the Circuit Court of Jefferson County "H. Glen Wood's counsel became thereafter entitled to receive notice with respect to any subsequent order in the case," and statements substantially to the same effect on Page 5 of the petition and on Page 25 of the supporting brief, as well as the statement on Page 4 of the petition that "No further notice of any kind or character was given to petitioner, H. Glen Wood, or to his attorney, Hassel B. Smith, with respect to any proceedings or orders in the case subsequent to the public notice of the time, place and conditions of the foreclosure sale held on September 5, 1936," and similar statements on Pages 5, 8, 9, 10, 12, 13 and 15 of the petition and on Pages 25, 26, 27 and 39 of the supporting brief, are all mere conclusions on the part of petitioners, entirely without support in the record herein.

The statement on Page 4 of the petition that "No action was taken to secure approval of the report of sale for nearly five years" is inaccurate. On January 10, 1938, the Circuit Court of Jefferson County made and entered an

order in said foreclosure suit approving the Master's report of conveyance filed on December 9, 1937 (Deft's. Ex. 22, R. 314, 188-190), which order was duly recorded in the chancery records of said court (R. 188-190). That order constituted an implied approval and confirmation of the Master's report of sale which had been on file since October 1, 1936, and the Supreme Court of Illinois in its opinion in this cause so held (R. 378).

Material Facts Omitted in Petitioners' Statement of the Case.

In addition to the petitioner, H. Glen Wood (who made a bid at the foreclosure sale), and his wife, there were also present at said sale the petitioner Leaffia Howe and her husband (R. 134-137).

Immediately after the close of the auction, the Master requested H. Glen Wood to accompany him to his office to pay the bid of $800.00, and they immediately left the place of sale and went together to the Master's office nearby. When they arrived there, just a few minutes after the sale, Wood informed the Master that he did not have the money to pay his bid and said he would like to have a few days in which to raise it. The Master immediately informed Curtis Williams, attorney for the bank, of Wood's inability to comply with his bid and of his request for time to raise the money, and in Williams' presence the Master advised Wood that if he (Wood) did not raise the money within a few days, the Master would accept the bid of the bank, issue to it a certificate of purchase and file the report of sale to the bank. H. Glen Wood agreed to this, and so did Williams, as attorney for the bank (R. 145-147, 152-155). At no time subsequent to this conversation did Williams have any discussion about the matter with H. Glen Wood or any of the other petitioners in this suit or any other member of the Wood family (R. 155).

Not only did the Master in Chancery issue a certificate of purchase to the respondent bank on October 1, 1936, containing the same recitals as in the report of sale filed on the same day, but he also filed a duplicate of said certificate in the office of the Recorder of Deeds (R. 147, and Deft's. Ex. 17, R. 311, 188-190). The report of sale was duly recorded by the clerk in the chancery records (Deft's. Ex. 16, R. 311, 188-190), and the duplicate certificate of purchase was likewise duly recorded in the certificate record of said Recorder (Deft's. Ex. 18, R. 311, 188-190).

The Master's report of conveyance stating that on December 9, 1937, pursuant to the decree of foreclosure, he, as Master in Chancery, executed and delivered to the respondent bank a deed to the real estate in question, was not only filed on that day (R. 312-313, 188-190), but it was duly recorded in the chancery records of the Circuit Court (Deft's. Ex. 21, R. 313, 188-190).

During the redemption period following the Master's sale on September 5, 1936, no one made any offer to the Master to redeem the premises in question from the sale (R. 147), and neither during that period nor at any time thereafter did the petitioners herein or any of the other defendants in the foreclosure suit offer to redeem the premises from the bank (R. 158). Not until five years after the sale did the petitioners offer to redeem, when on September 2, 1941, they tendered the redemption money to the Master (R. 142-143), shortly after oil was discovered on the property during the preceding July (R. 184-185).

Following the execution and delivery of the Master's deed of December 9, 1937, to the respondent bank, the defendants in the foreclosure suit (including all the petitioners herein) voluntarily surrendered possession of said premises to the bank some time during the latter part of February, 1938 (R. 157). The bank on February 21, 1938, entered into a written lease with a tenant, Walter Dankwardt, and immediately after the execution of the lease,

the bank, through such tenant, went into possession of the premises and thereafter continuously remained in possession thereof through the same tenant (R. 157). William C. Wood, father of the petitioners herein and one of the defendants in the foreclosure suit, was living on the mortgaged premises when that suit was filed and continued to live there during the redemption period. He and his son (H. Glen Wood) held a public sale some time in February, 1938, and moved off the premises (R. 131, 157).

The respondent bank paid the taxes on said land for the years 1936 to 1940, inclusive, and after going into possession it made some improvements on the premises. After the bank's tenant went into possession, he took full charge of the property, occupying the whole 40-acre tract and cultivating and pasturing it, and paid cash rent to the bank. From the date of the Master's deed, December 9, 1937, until the filing of this suit, none of the petitioners herein nor anyone else questioned the bank's right to possession of the property (R. 157-159).

On April 1, 1940, the said William C. Wood died intestate, leaving as his sole heirs at law the petitioners herein (R. 130).

During the entire pendency of the foreclosure suit, the petitioners H. Glen Wood, Grace Schmidt and Leaffia Howe, all of whom were defendants in that case, were residents of Jefferson County, none of them living more than three miles from the land in question. When the foreclosure suit was filed, the said H. Glen Wood was living just across the highway from the mortgaged property and lived there until March, 1938, when he moved to Mt. Vernon, Illinois, in the same County (Jefferson), and that county continued to be his home and voting place up to the time of the trial of the instant suit (R. 131, 133). From the time the foreclosure suit was filed and up to the time of the trial of the instant suit, the said Grace Schmidt resided continuously in the Village of Woodlawn in Jeffer-

son County, about three miles from the mortgaged premises (R. 158-159). The said Leaffia Howe was living within one-half mile of the mortgaged property when the foreclosure suit was filed and was still living there at the time of trial of the instant suit (R. 135).

The petitioners herein remained as defendants in the foreclosure suit during the entire pendency thereof, and none of them were minors or under any disability whatsoever at the time of the filing of said foreclosure suit or at any time thereafter (R. 190).

No objections or exceptions of any kind were ever filed by any of the defendants in the foreclosure suit or by any of the petitioners herein, or by anyone at all, to the Master's report of sale, filed on October 1, 1936, or to the sale therein reported, or to the Master's certificate of purchase filed on the same day, or to the Master's report of conveyance filed on December 9, 1937, or to the order entered by said Circuit Court on January 10, 1938, approving the Master's report of conveyance, or to any other of the orders or proceedings made and taken in the course of said foreclosure suit, either prior or subsequent to the entry of the decree of foreclosure on July 13, 1936 (R. 231; Deft's. Ex. 29, R. 318, 171); and no proceedings, other than the instant suit, were filed by the defendants in said foreclosure suit, or any of them, to appeal or review said foreclosure proceeding (R. 190).

When the Master's deed was executed on December 9, 1937, the nearest oil and gas production to the land involved in this suit was ten or twelve miles away (R. 185-187). At the time the original well was commenced on said land in June or July, 1941, the nearest production was about a mile away. Kingwood No. 1 well on the land here involved was the discovery well in this field and was drilled for Kingwood by Fryer & Ratcliff. The well was completed as a producer in July, 1941, and put on regular production the latter part of that month. At the time of

trial five wells had been drilled on the 40-acre tract involved in this suit by Kingwood and its co-owners of the lease, all of which wells resulted in production of oil and gas in paying quantities. Up to February 28, 1942, Kingwood and its operating partners had expended in drilling, equipping and operating costs on those five wells the total sum of $76,393, and up to that time had produced therefrom oil of the total value of $289,322. Prior to any drilling on the premises here involved Kingwood Oil Company had no knowledge of any claims to said property on the part of petitioners (R. 184-187).

SUMMARY OF ARGUMENT.

I.

No federal question was presented for decision or decided in this cause at any stage thereof, either in the trial court or in the State Supreme Court, and therefore this Court is without jurisdiction.

Sec. 237 (b) of Judicial Code [28 U. S. C. A., Sec. 344 (b)];

F. G. Oxley Stave Co. v. Butler County, 166 U. S. 648, 41 L. Ed. 1149, 17 S. Ct. 709;

Louisville & Nashville R. R. Co. v. Louisville, 166 U. S. 709, 41 L. Ed. 1173, 17 S. Ct. 725;

Levy v. Superior Court of City and County of San Francisco, 167 U. S. 175, 42 L. Ed. 126, 17 S. Ct. 769;

Union Mutual Life Ins. Co. v. Kirchoff, 169 U. S. 103, 42 L. Ed. 677, 18 S. Ct. 260;

Michigan Sugar Co. v. Dix, 185 U. S. 112, 46 L. Ed. 829, 22 S. Ct. 581;

Illinois Supreme Court Rule 36, 370 Ill. 37-41;

Illinois Supreme Court Rule 39, 370 Ill. 44-45;

Southwestern Bell Telephone Co. v. State of Oklahoma, 303 U. S. 206, 82 L. Ed. 751, 58 S. Ct. 528;

Honeyman v. Hanan, 300 U. S. 14, 81 L. Ed. 476, 57 S. Ct. 350;

Adams v. Russell, 229 U. S. 353, 57 L. Ed. 1224, 33 S. Ct. 846;

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U. S. 673, 74 L. Ed. 1107, 50 S. Ct. 451;

Campbell v. Olney, 262 U. S. 352, 67 L. Ed. 1021, 43 S. Ct. 559;

United Gas Public Service Co. v. State of Texas, 303 U. S. 123, 82 L. Ed. 702, 58 S. Ct. 483;

Hartford Life Ins. Co. v. Blincoe, 255 U. S. 129, 65 L. Ed. 549, 41 S. Ct. 276;

Palmer v. State of Ohio, 248 U. S. 32, 63 L. Ed. 108, 39 S. Ct. 16;

Detroit & M. R. Co. v. Fletcher Paper Co., 248 U. S. 30, 63 L. Ed. 107, 39 S. Ct. 13;
Iroquois Transp. Co. v. Delaney Forge & Iron Co., 205 U. S. 354, 51 L. Ed. 836, 27 S. Ct. 509.

II.

The decision of the State Supreme Court rests on adequate and substantial non-federal grounds, and hence this Court is without jurisdiction.

Petrie v. Nampa & Meridian Irrig. Dist., 248 U. S. 154, 63 L. Ed. 178, 39 S. Ct. 25;
New York ex rel. Doyle v. Atwell, 261 U. S. 590, 67 L. Ed. 814, 43 S. Ct. 410;
Arkansas Southern R. R. Co. v. German National Bank, 207 U. S. 270, 52 L. Ed. 201, 28 S. Ct. 78;
Consolidated Turnpike Co. v. Norfolk & O. V. R. Co., 228 U. S. 596, 57 L. Ed. 982, 33 S. Ct. 605;
Speck v. Pullman Palace Car Co., 121 Ill. 33;
Davies v. Gibbs, 174 Ill. 272;
Barnes v. Henshaw, 226 Ill. 605;
Ill. Rev. Stat. 1943, Chap. 77, Sec. 18.

III.

The record in the foreclosure suit being silent on the question whether Rule 7 of the Circuit Court of Jefferson County was complied with in the matter of the confirmation of the Master's sale, and there being no proof in the present suit negativing such compliance, it must be presumed that the rule was duly observed.

Dennison v. Taylor, 142 Ill. 45;
Matthews v. Doner, 292 Ill. 592;
People v. Miller, 339 Ill. 573;
Horn v. Metzger, 234 Ill. 240;
Field v. Peeples, 180 Ill. 376;
Forrest v. Fey, 218 Ill. 165;
Jeffries v. Alexander, 266 Ill. 49;
Grimm v. Grimm, 302 Ill. 511.

IV.

Respondents other than the bank were and are bona fide purchasers.

V.

Petitioners were guilty of laches.

Walker v. Warner, 179 Ill. 16;
Twin-Lick Oil Co. v. Marbury, 91 U. S. 587, 23 L. Ed. 328;
Hayward v. The Eliot National Bank, 96 U. S. 611, 24 L. Ed. 855.

ARGUMENT.

I.

No Federal Question Was Presented for Decision or Decided in This Cause at Any Stage Thereof, Either in the Trial Court or in the State Supreme Court, and Therefore This Court Is Without Jurisdiction.

Petitioners contend that they set up their claim as to want of due process of law under the Fifth and Fourteenth Amendments to the Constitution of the United States by alleging in their complaint in the trial court that they had no notice of the filing of the Master's report of sale or of the contents thereof or of the execution and delivery of a certificate of purchase to the respondent bank (R. 6), and no notice of or opportunity to be heard with respect to the entry of the order of June 10, 1941, approving and confirming said report of sale (R. 10). It is not contended by petitioners that they raised or presented for decision any Federal question otherwise than by the above-mentioned allegations in their complaint.

Respondents respectfully submit that said allegations in the complaint were entirely insufficient to present a Federal question for decision or to show that any title, right, privilege or immunity under the Federal Constitution was being relied upon; and respondents further submit that said allegations do not meet the statutory requirements. Section 237 (b) of Judicial Code as amended by the Act of February 13, 1925 [28 U. S. C. A., Section 344 (b)]; that some title, right, privilege or immunity be "specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States." In the allegations in question petitioners made no reference whatever to the Constitution of the United States, nor did they adopt the phraseology of the due-process clause of either

the Fifth or the Fourteenth Amendment to the Federal Constitution, or use any language bearing the remotest similarity to such phraseology. The allegations were totally inadequate to show by clear and necessary intendment that a Federal right was being asserted or to make known to the Court that it was being called upon to adjudicate any Federal right, title, privilege or immunity.

The decision of this Court in *F. G. Oxley Stave Co. v. Butler County*, 166 U. S. 648, 41 L. Ed. 1149, 17 S. Ct. 709, is especially applicable here. In that case it is said:

> "Looking into the record we do not find that any reference was made in the court of original jurisdiction to the Constitution of the United States. Nor can it be inferred from the opinion of the supreme court of Missouri that that court was informed by the contention of the parties that any Federal right, privilege, or immunity was intended to be asserted. For aught that appears the state court proceeded in its determination of the cause without any thought that it was expected to decide a Federal question." * * *
>
> "The only remaining question was not otherwise raised than by the general allegation that the decree was rendered against dead persons as well as in the absence of necessary parties who had no notice of the suit, and therefore no opportunity to be heard in vindication of their rights. Do such general allegations meet the statutory requirement that the final judgment of a state court may be re-examined here if it denies some title, right, privilege, or immunity 'specially set up or claimed' under the Constitution or authority of the United States? We think not. The specific contention now is that the decree of the Butler county circuit court in the suit instituted by the county of Butler was not consistent with the due process of law required by the 14th Amendment of the Constitution of the United States. But can it be said that the plaintiffs *specially* set up or claimed the protection of that Amendment against the operation of

that decree by simply averring—without referring to the Constitution or even adopting its phraseology—that the decree was passed against deceased persons as well as in the absence of necessary or indispensable parties?

"This question must receive a negative answer, if due effect be given to the words 'specially set up or claimed' in U. S. Rev. Stat., Sec. 709. These words were in the 25th section of the judiciary act of 1789 (1 Stat. at L. 85), and were inserted in order that the revisory power of this court should not extend to rights denied by the final judgment of the highest court of a state, unless the party claiming such rights plainly and distinctly indicated, before the state court disposed of the case, that they were claimed under the Constitution, treaties, or statutes of the United States. The words 'specially set up or claimed' imply that if a party intends to invoke for the protection of his rights the Constitution of the United States or some treaty, statute, commission, or authority of the United States, he must so declare; and unless he does so declare 'specially,' that is, unmistakably, this court is without authority to re-examine the final judgment of the state court. This statutory requirement is not met if such declaration is so general in its character that the purpose of the party to assert a Federal right is left to mere inference. It is the settled doctrine of this court that the jurisdiction of the circuit courts of the United States must appear affirmatively from the record, and that it is not sufficient that it may be inferred argumentatively from the facts stated. Hence, the averment that a party resides in a particular state does not import that he is a citizen of that state. *Brown v. Keene*, 33 U. S. 8 Pet. 115 (8: 886); *Robertson v. Cease*, 97 U. S. 646, 649 (24: 1057, 1059). Upon like grounds the jurisdiction of this court to re-examine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a Federal right." * * *

"Without further references to adjudged cases, we are of opinion that the general allegation or claim, in different forms, that the decree of the Butler county circuit court was passed against some persons who were at the time dead, and against others who were necessary parties but who had no notice of the proceedings, does not, within the meaning of U. S. Rev. Stat., Sec. 709, specially set up a right or immunity under the 14th Amendment of the Constitution of the United States, forbidding a state to deprive any person of his property without due process of law."

The decision of this Court in the *Oxley Stave Co. case, supra,* was followed in *Louisville & Nashville R. R. Co. v. Louisville,* 166 U. S. 709, 41 L. Ed. 1173, 17 S. Ct. 725; *Levy v. Superior Court of City and County of San Francisco,* 167 U. S. 175, 42 L. Ed. 126, 17 S. Ct. 769; *Union Mutual Life Ins. Co. v. Kirchoff,* 169 U. S. 103, 42 L. Ed. 677, 18 S. Ct. 260; and many other decisions of this Court.

In *Michigan Sugar Co. v. Dix,* 185 U. S. 112, 46 L. Ed. 829, 22 S. Ct. 581, this Court also said:

"The petition for mandamus nowhere set up that the state of Michigan had passed any law impairing the obligation of a contract with relator, and nowhere invoked the protection of any provision of the Federal Constitution, nor was any issue in relation thereto raised upon the record.

"It is clear that the case did not fall within either the first or second of the classes of cases in which the judgment of a state court may be re-examined under Sec. 709 of the Revised Statutes. The validity of no treaty or statute of, or authority exercised under, the United States, was drawn in question; nor was the validity of a statute of, or an authority exercised under, the state drawn in question on the ground of repugnancy to the Constitution, treaties, or laws of the United States, and its validity sustained. And as to the third class, no right, title, privilege, or immu-

nity was specially set up or claimed as belonging to relator under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and denied.

"The supreme court of the state did not refer to the Federal Constitution, or consider and decide any Federal question. For aught that appears, the court proceeded in its determination of the cause without any thought that it was disposing of such a question.

"The rule is firmly established, and has been frequently reiterated, that the jurisdiction of this court to re-examine the final judgment of a state court, under the 3d division of Sec. 709, cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing the case here from such court intended to assert a Federal right. The statutory requirement is not met unless the party unmistakably declares that he invokes, for the protection of his rights, the Constitution, or some treaty, statute, commission, or authority, of the United States."

We wish again to remind the Court that in petitioners' jurisdictional statement as to what they set up in their complaint in the trial court (petition for certiorari, p. 8), they do not state that they raised any question about the order of January 10, 1938, approving the Master's report of conveyance filed on December 9, 1937 (Deft's. Ex. 22, R. 314, 188-190). That order constituted an implied approval and confirmation of the Master's report of sale which had been on file since October 1, 1936, and the Supreme Court of Illinois so held in its opinion in this cause (R. 371, 378). In their complaint, petitioners did not even mention said order of January 10, 1938, and after respondents had pleaded that order in their answer in the trial court (R. 37-38, 60-61), petitioners in their replies to said answers merely denied that said order had been entered. They did not allege in their complaint or in their

replies any lack of notice of, or opportunity to be heard with respect to, said order of January 10, 1938. Consequently, by no stretch of the imagination can it be said that petitioners "specially set up or claimed" any Federal right with reference to the order of January 10, 1938, which order amounted to a confirmation of the sale.

But even if, by the most liberal interpretation of the allegations relied upon by petitioners as constituting the assertion of Federal claims in the trial court, it could be said that petitioners "specially set up or claimed" a Federal right or presented a Federal question to the trial court for decision, nevertheless, no Federal question of any character was presented for decision to the State Supreme Court or decided by it, and consequently this Court is without jurisdiction herein regardless of the question whether a Federal right was asserted in the trial court.

The transcript of the record filed herein does not include the briefs filed in the State Supreme Court and therefore does not show, except as indicated in the opinions filed in the case (R. 328, 371), what errors were assigned by petitioners in that Court and what propositions of law were urged and relied upon therein by them as grounds for reversal of the trial court's judgment. Rule 36 of the Supreme Court of Illinois (370 Ill. 37-41) provides among other things that:

> "No assignment of errors or of cross-errors shall be necessary, except the statement in the brief, at the conclusion of the statement of the case, of the errors relied upon for reversal, as required in Rule 39."

And Rule 39 of that Court (370 Ill. 44-45) provides with reference to the brief of appellant that:

> "The concluding subdivision of the statement of the case shall be a brief statement of the errors or cross-errors relied upon for a reversal or of the cross-errors submitted by an appellee not prosecuting a cross-appeal. * * * No alleged error or point not

contained in such brief shall be raised afterwards, either by reply brief or in oral or printed argument or on petition for rehearing."

Consequently, there being no showing in the transcript filed herein of the brief of appellants (petitioners here) filed in the State Supreme Court, it cannot be known to this Court from the transcript exactly what errors were assigned by petitioners as appellants in the State Supreme Court and what points of law were presented and relied upon therein by them as grounds for reversal of the decree of the trial court. However, we consider it to be our duty to make known to this Court precisely what petitioners' assignments of error were as appellants in the State Supreme Court and what propositions of law were urged and relied upon by them in that Court as grounds for reversal.

The errors which petitioners, as appellants in the State Supreme Court, relied upon as grounds for reversal were set out as follows in their brief filed in that Court:

"1. The Court erred in dismissing the complaint of appellants for want of equity and in entering a decree against appellants for costs.

"2. The Court erred in refusing to grant the relief prayed for in appellants' complaint.

"3. The Court erred in refusing to decree that appellants are entitled to redeem from the decree for foreclosure.

"4. The Court erred in refusing to hear certain testimony offered by appellants.

"5. The Court erred in admitting certain evidence offered by appellees.

"6. The Court erred in refusing to decree that appellants are entitled to redeem under the statute.

"7. The Court erred in refusing to decree that appellants are entitled to redeem in equity.

"8. The Court erred in refusing to decree that the Master's report of sale and the certificate of purchase and deed executed by the Master in Chancery were a nullity, void and a cloud upon the title of appellants.

"9. The Court erred in refusing to decree that the oil and gas leases and deeds executed by appellees are void and clouds upon title of appellants."

The propositions of law presented and argued by petitioners in their said brief as appellants in the State Supreme Court were as follows:

"I. A freehold is involved and this appeal is properly taken to this Court.

"II. The Circuit Court was without power or jurisdiction to authorize the course of conduct pursued by the Master in Chancery and there was no sale under the foreclosure decree.

"III. A sale or conveyance made in a manner not prescribed by the decree for foreclosure is a nullity and the Court is without power to approve such a sale.

"IV. The foreclosure suit is properly reviewed in this proceeding, brought less than ninety days after the entry of the order purporting to approve the Master's report of sale.

"V. The defenses of laches, estoppel and bona fide purchase are not available to appellees."

Certainly, no argument is necessary to demonstrate that neither in their assignments of error in the State Supreme Court nor in the propositions of law set up and relied upon in their brief in that Court as grounds for reversal of the trial court's judgment did the petitioners present for decision to the State Supreme Court any Federal question whatsoever. It is perfectly apparent from the above-mentioned assignments of error and propositions of law relied upon by petitioners in their brief in the State Su-

preme Court that they presented to that Court for decision nothing but questions of local law.

The opinion rendered by the Supreme Court of Illinois in this cause (R. 371-379) shows unmistakably that that Court decided no Federal question of any character, but only questions of local law.

To give this Court jurisdiction to review a State Court decision, it must appear affirmatively from the record, not only that a Federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the Federal question was necessary to the determination of the cause, and that the Federal question was actually decided, or that the judgment as rendered could not have been given without deciding it. On this point, in *Southwestern Bell Telephone Co. v. State of Oklahoma*, 303 U. S. 206, 58 S. Ct. 528, 82 L. Ed. 751, this Court said:

> "We have repeatedly held that it is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a Federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the Federal question was necessary to the determination of the cause; that the Federal question was actually decided or that the judgment as rendered could not have been given without deciding it. *De Saussure v. Gaillard*, 127 U. S. 216, 234, 32 L. Ed. 125, 132, 8 S. Ct. 1053; *Johnson v. Risk*, 137 U. S. 300, 306, 307, 34 L. Ed. 683, 686, 11 S. Ct. 111; *Walter A. Wood Mowing & Reaping Mach. Co. v. Skinner*, 139 U. S. 293, 295, 297, 35 L. Ed. 193-195, 11 S. Ct. 528; *Whitney v. California*, 274 U. S. 357, 360, 361, 71 L. Ed. 1095, 1099, 1100, 47 S. Ct. 641; *Lynch v. New York*, 293 U. S. 52, 54, 79 L. Ed. 191, 192, 55 S. Ct. 16."

To the same effect are *Honeyman v. Hanan*, 300 U. S. 14, 57 S. Ct. 350, 81 L. Ed. 476; *Adams v. Russell*, 229 U. S.

353, 33 S. Ct. 846, 57 L. Ed. 1224; and numerous other decisions of this Court, many of which are collected under Notes 41 and 49 of the Annotations to Section 344 of 28 U. S. C. A. (Section 237, Judicial Code).

Decisions of state courts on matters of local law not involving constitutional questions are controlling and not subject to review by this Court. Thus, in *Brinkerhoff-Faris Trust & Savings Company v. Hill*, 281 U. S. 673, 50 S. Ct. 451, 74 L. Ed. 1107, it is said:

> "It is true that the courts of a state have the supreme power to interpret and declare the written and unwritten laws of the state; that this court's power to review decisions of state courts is limited to their decisions on Federal questions; and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the 14th Amendment or otherwise confer appellate jurisdiction on this court."

In *Campbell v. Olney*, 262 U. S. 352, 43 S. Ct. 559, 67 L. Ed. 1021, this Court also said:

> "The judgment of that court necessarily determines that the state laws were complied with. Unless a Federal right is involved, the state court's application of local laws will not be reviewed here. *Hallinger v. Davis*, 146 U. S. 314, 319, 36 L. Ed. 986, 989, 13 Sup. Ct. Rep. 105; *Peters v. Broward (Peters v. Gilchrist)*, 222 U. S. 483, 492, 56 L. Ed. 278, 283, 32 Sup. Ct. Rep. 122; *Armour Packing Co. v. Lacy*, 200 U. S. 226, 234, 50 L. Ed. 451, 456, 26 Sup. Ct. Rep. 232; *Wade v. Travis County*, 174 U. S. 499, 508, 43 L. Ed. 1060, 1064, 19 Sup. Ct. Rep. 715; *Osborne v. Florida*, 164 U. S. 650, 654, 41 L. Ed. 586, 587, 17 Sup. Ct. Rep. 214; *Bardon v. Land & River Improv. Co.*, 157 U. S. 327, 331, 39 L. Ed. 719, 721, 15 Sup. Ct. Rep. 650; *Missouri v. Lewis (Bowman v. Lewis)*, 101 U. S. 22, 32, 33, 25 L. Ed. 989, 992, 993."

And again, in *United Gas Public Service Co. v. State of Texas,* 303 U. S. 123, 58 S. Ct. 483, 82 L. Ed. 702, this Court said:

> "It is not our function, in reviewing a judgment of the state court, to decide local questions. We are concerned solely with asserted Federal rights."

To the same effect are: *Hartford Life Ins. Co. v. Blincoe,* 255 U. S. 129, 41 S. Ct. 276, 65 L. Ed. 549; *Palmer v. State of Ohio,* 248 U. S. 32, 39 S. Ct. 16, 63 L. Ed. 108; *Detroit & M. R. Co. v. Fletcher Paper Co.,* 248 U. S. 30, 39 S. Ct. 13, 63 L. Ed. 107; *Iroquois Transp. Co. v. DeLaney Forge & Iron Co.,* 205 U. S. 354, 27 S. Ct. 509, 51 L. Ed. 836; and many other decisions of this Court cited in Notes 71 to 75 and 81 of the Annotations to Section 344 of 28 U. S. C. A.

In their supporting brief petitioners devote considerable space (petition for certiorari, pp. 27-28) to a criticism of the Supreme Court of Illinois in this case because of its holding that petitioners' complaint, so far as it sought to impeach the foreclosure proceedings, amounted to a bill of review and that the action could not be maintained as a bill of review because the complaint did not meet the well-settled requirements of such a bill. In this connection we desire to point out that in petitioners' brief as appellants in the State Supreme Court they said as a part of their statement of the case that the suit was brought "to quiet title to certain land located in that county, to cancel as a cloud upon the title a certificate of purchase and deed executed by the Master in Chancery of the Circuit Court of Jefferson County, *to review a suit to foreclose a mortgage* and to redeem from a decree for foreclosure, and to cancel and remove other conveyances and recorded instruments as clouds upon title." Furthermore, as will be observed from the propositions of law which petitioners urged in said brief in the State Supreme Court and which are hereinbefore quoted, their fourth proposi-

tion was that "the foreclosure suit is properly reviewed in this proceeding, brought less than ninety days after the entry of the order purporting to approve the Master's report of sale." It is therefore obvious that one of the theories on which petitioners submitted the case to the State Supreme Court was that the suit was a bill of review.

We also wish to mention that the statement on page 35 of petitioners' brief herein that the attorney for the respondent First National Bank of Woodlawn presented the order approving the sale, and the statement on page 37 of said brief to the effect that the respondents procured the entry of said order, are without any support whatever in the record. The record does not show that anyone other than the Master in Chancery presented or had anything to do with the entry of either the order of January 10, 1938, approving the Master's report of conveyance (R. 314), or the order of June 10, 1941, approving the Master's report of sale (R. 230).

The cases cited in the petition for certiorari and supporting brief do not support petitioners' contentions that they were deprived of property without due process of law and that a Federal question was involved in the decision of the State Supreme Court. This Court will no doubt examine those cases and so we shall not prolong this brief by analyzing them in detail to show their inapplicability to the case at bar. Suffice it to say that each of them deals with a factual situation totally dissimilar to that in the instant suit and that an examination of them readily discloses that they are not in point here.

The transcript of the record filed herein does not purport to be complete. As we have already mentioned, it omits entirely the briefs filed in the State Supreme Court and consequently does not show what questions were presented to that Court for decision nor what the issues were in that Court. It does not include the trial court record,

but only an abstract thereof. The certificate of the Clerk of the Supreme Court of Illinois to said transcript (R. 382-383) does not state that it is a complete transcript of the record in the case, including the proceedings in that Court, but that the transcript contains a true copy of "the abstract of record filed August 24, 1942," and copies of certain enumerated portions of the proceedings in the State Supreme Court. Rule 38 of this Court requires that a petition for review on writ of certiorari of a decision of a State Court of last resort "shall be accompanied by a certified transcript of the record in the case, including the proceedings in the Court to which the writ is asked to be directed." We understand this rule to mean that the transcript of the record must be complete, and show all the proceedings in the case, including those in the trial court as well as those in the Court to which the writ is asked to be directed. If this be the correct interpretation of the rule, respondents respectfully submit that the transcript of the record filed herein by petitioners does not meet the requirements of Rule 38 of this Court and that this is a sufficient reason for denying the petition for a writ of certiorari.

II.

The Decision of the State Supreme Court Rests on Adequate and Substantial Non-Federal Grounds, and Hence This Court Is Without Jurisdiction.

An examination of the final opinion of the State Supreme Court in this cause (R. 371-379) discloses that the decision of the Court is based entirely on local law. The opinion shows that the grounds of the decision were:

(1) That under the settled law of the State, the complaint, so far as it sought to impeach the foreclosure proceeding, amounted to a bill of review;

(2) That the complaint did not meet the requisites of a bill of review under the local law in that:

(a) The foreclosure proceeding appeared on its face to be regular and the deeds executed by the Master to have been fully authorized by court action, and there was nothing in the facts alleged or in the prayer that would furnish grounds for relief to correct error appearing upon the face of the record;

(b) The complaint could not be sustained as a bill to bring in newly discovered evidence because the facts upon which petitioners sought to impeach the former record were known to them or could have been ascertained immediately after the Master filed the duplicate of the certificate of purchase with the Recorder on October 1, 1936, and petitioners did not explain their failure to present the evidence of the irregularity of the Master in the foreclosure proceeding or make the requisite showing of diligence to obtain such evidence; and,

(c) The action was a collateral attack on the foreclosure proceeding and could not be maintained as a bill of review based on the fraud of the Master, because the fraud complained of was intrinsic and therefore not of the character for which a judgment or order may be impeached;

(3) That petitioners had no right to redeem, and the suit could not be maintained as one for redemption, because:

(a) The statutory period of redemption had expired before petitioners tendered to the Master the necessary amount to redeem and before they commenced this suit; and,

(b) Under the settled law of the State, no grounds had been shown sufficient to warrant a court of equity in granting petitioners the right to redeem after the statutory period of redemption had expired.

Certainly, no argument is necessary to demonstrate that the decision of the State Supreme Court rests on adequate and substantial non-Federal grounds.

In *Petrie v. Nampa & Meridian Irrig. Dist.*, 248 U. S. 154, 63 L. Ed. 178, 39 S. Ct. 25, this Court said:

> "But the second ground of the motion to dismiss is valid, viz., that, even if it be conceded that the supreme court decided a Federal question against the plaintiffs in error, nevertheless, the court decided against them also upon an independent ground, not involving any Federal question and broad enough to support the judgment, and for this reason the Federal question involved will not be considered on this writ of error, under a series of decisions by this court, extending at least from *Klinger v. Missouri*, 13 Wall. 257, 263, 20 L. Ed. 635, 637, to *Enterprise Irrig. Dist. v. Farmers' Mut. Canal Co.*, 243 U. S. 157, 164, 61 L. Ed. 644, 648, 37 Sup. Ct. Rep. 318."

In *New York ex rel. Doyle v. Atwell*, 261 U. S. 590, 67 L. Ed. 814, 43 S. Ct. 410, this Court again announced the rule as follows:

> "It is settled law that where the record discloses that the judgment of a state court was based not alone upon a ground involving a Federal question, but also upon another and independent ground, broad enough to maintain the judgment, this court will not take jurisdiction to review such judgment, and will dismiss a writ of error brought for that purpose. *Eustis v. Bolles*, 150 U. S. 361, 366, 37 L. Ed. 1111, 1112, 14 Sup. Ct. Rep. 131; *Dibble v. Bellingham Bay Land Co.*, 163 U. S. 63, 69, 41 L. Ed. 72, 74, 16 Sup. Ct. Rep. 939; *Allen v. Arguimbau*, 198 U. S. 149, 155, 49 L. Ed. 990, 993, 25 Sup. Ct. Rep. 622; *Adams v. Russell*, 229 U. S. 353, 358, 57 L. Ed. 1224, 1226, 33 Sup. Ct. Rep. 846; *Cuyahoga River Power Co. v. Northern Realty Co.*, 244 U. S. 300, 304, 61 L. Ed. 1153, 1157, 37 Sup. Ct. Rep. 643."

To the same effect are *Arkansas Southern R. R. Co. v. German National Bank*, 207 U. S. 270, 52 L. Ed. 201, 28 S. Ct. 78; *Consolidated Turnpike Co. v. Norfolk & O. V. R. Co.*, 228 U. S. 596, 57 L. Ed. 982, 33 S. Ct. 605; and many other decisions of this Court cited in Note 50 of the Annotations to Section 344 of 28 U. S. C. A.

The contention of petitioners that the State Supreme Court ignored and refused to pass upon their claim as to lack of notice of, and an opportunity to be heard with respect to, the entry of the order of June 10, 1941, is entirely untenable. On this point, the State Supreme Court, in its final opinion (R. 374-375) said, "Plaintiffs do not explain their failure to present the evidence of the irregularity of the Master in the foreclosure proceeding other than to say they had no notice that the Master was making application to have the report of sale and report of deed approved. In this character of action where a showing of diligence is requisite to the maintenance of the suit, a plaintiff does not show diligence by the mere assertion that he had no notice that the court was going to enter an order when, fact as a fact, he was a party to the action. It requires evidence of affirmative acts on his part, something to show that he was faithfully endeavoring to obtain the evidence which he now offers but for some unavoidable reason was not able to discover."

Moreover, the contention of petitioners that they had no notice of, or opportunity to be heard with respect to, the Master's report of sale and the confirmation thereof, is without the slightest merit or foundation. They were all parties defendant to the foreclosure suit and were duly served with process. As parties to the suit, they were required to follow the course of the proceeding and were bound to take notice of the Master's report of sale and of the contents thereof. After the report of sale was filed on October 1, 1936, petitioners had ample opportunity—more than fifteen months before the entry of the order of

January 10, 1938, approving the Master's report of conveyance and by implication approving also the Master's report of sale—in which to file in the foreclosure suit any and all objections or exceptions that they may have seen fit to file to the report of sale and to the sale therein reported, and to present as exceptions to the Master's report all the matters and questions they sought to litigate in the instant suit. However, they filed no such objections or exceptions, but allowed the sale to be confirmed without protest; and there is no showing of any kind in the present suit that petitioners were in any way misled or prevented from filing in the foreclosure suit any and all objections and exceptions to the Master's report of sale that they may have cared to file. As stated by the Supreme Court of Illinois in its first opinion in this cause (R. 332), "It was their duty, if they desired to question the validity of such report of sale, to file objections with the circuit court, to whom the report was made, and in case of adverse ruling they would have had the right to appeal from the decree in the premises." Under the rule, well settled in Illinois (*Speck v. Pullman Palace Car Co.*, 121 Ill. 33; *Davies v. Gibbs*, 174 Ill. 272, and *Barnes v. Henshaw*, 226 Ill. 605), as well as in other jurisdictions, the order of confirmation in the foreclosure suit was conclusive as to all matters upon which the Court might have been called upon to pass, had the parties chosen to bring them forward as objections to the confirmation.

As pointed out by the State Supreme Court in its final opinion (R. 379), "There was no showing of fraud or unfairness that prevented plaintiffs from redeeming within the statutory period. The conduct of the Master in making his report of sale did not prevent plaintiffs from redeeming from the sale." They had the right at any time within twelve months from the sale to redeem by paying to the purchaser (the respondent bank) or to the Master in Chancery, for the benefit of the purchaser, "the sum

of money for which the premises were sold or bid off, with interest thereon at the rate of 6 per cent per annum from the time of such sale" (Ill. Rev. Stat. 1943, Chap. 77, Sec. 18). However, not until five years after the sale did the petitioners offer to redeem when, on September 2, 1941, they tendered the redemption money to the Master (R. 142-143), shortly after oil was discovered on the property during the preceding July (R. 184-185).

III.

The Record in the Foreclosure Suit Being Silent on the Question Whether Rule 7 of the Circuit Court of Jefferson County Was Complied With in the Matter of the Confirmation of the Master's Sale, and There Being No Proof in the Present Suit Negativing Such Compliance, It Must Be Presumed That the Rule Was Duly Observed.

Petitioners place much reliance upon Rule 7 of the Circuit Court of Jefferson County (R. 363-364) in connection with their claim as to lack of notice of, or opportunity to be heard with respect to, the entry of the order of June 10, 1941.

By way of introduction to our discussion under this proposition, we make the following preliminary remarks, namely: That there is no requirement in Rule 7 for notifying anyone but opposing counsel of record, nor any provision for service of notice upon any party litigant; that the rule in question does not require that the record in a particular case show on its face compliance with said rule; that the rule, by its express terms, does not apply to parties in default, and that H. Glen Wood was the only defendant in the foreclosure suit who entered any appearance or filed any pleading therein, all the other defendants having defaulted.

Even if it be assumed that compliance with Rule 7 was

either necessary or required in connection with the confirmation of the Master's sale, which respondents deny, there being nothing in the record in the foreclosure suit showing affirmatively that said rule was not complied with, and there being no proof in the present suit of noncompliance with said rule, it must be presumed in support of the court's jurisdiction that the rule was duly observed.

It is scarcely necessary to say that in the foreclosure suit the Circuit Court was acting as a court of general jurisdiction. It is a fundamental principle that when the judgment of a court of general jurisdiction, acting within the ordinary scope of that jurisdiction, is attacked collaterally, every presumption will be indulged in favor of the court's jurisdiction, unless it affirmatively appears on the face of the record that the court was without jurisdiction, and everything not negatived by the record will be presumed in support of the judgment. There can be no doubt that under the law of Illinois this suit is a collateral attack on the mortgage foreclosure proceedings (*Dennison v. Taylor*, 142 Ill. 45; *Matthews v. Doner*, 292 Ill. 592).

In *People v. Miller*, 339 Ill. 573, the Supreme Court of Illinois said at page 579:

> "It is a well-established and universally recognized rule that when the judgment of a court of general jurisdiction, acting within the ordinary scope of that jurisdiction, is attacked collaterally, every presumption is made in favor not only of the proceedings, but of the Court's jurisdiction, unless it affirmatively appears on the face of the record that the court was without jurisdiction (*Kenney v. Greer*, 13 Ill. 432; *Clark v. Thompson*, 47 id. 25; *Forrest v. Fey*, 218 id. 165; *Galpin v. Page*, 18 Wall. 350)."

And, again, in *Horn v. Metzger*, 234 Ill. 240, it is said, at page 243:

> "It is a rule of uniform application in relation to superior courts or courts of general jurisdiction, that nothing is to be presumed to be out of their jurisdiction, but that which specially appears to be so. Where the record of a judgment or decree is relied on in a collateral proceeding, jurisdiction must be presumed in favor of a court of general jurisdiction, although it is not alleged and does not appear in the record (*Swearengen v. Gulick*, 67 Ill. 208; *Benefield v. Albert*, 132 id. 665; *Nickrans v. Wilk*, 161 id. 76; *Cassell v. Joseph*, 184 id. 378)."

To the same effect are *Field v. Peeples*, 180 Ill. 376; *Forrest v. Fey*, 218 Ill. 165; *Jeffries v. Alexander*, 266 Ill. 49; *Grimm v. Grimm*, 302 Ill. 511, and many other decisions of the Illinois Supreme Court.

The petitioners having by this suit attacked the jurisdiction of the court to approve and confirm the Master's sale in the foreclosure suit, it is, of course, elementary that the burden was on them to prove a want of such jurisdiction and to overcome the presumption existing in favor of the Court's jurisdiction.

The record in the foreclosure suit is silent on the question whether Rule 7 was complied with or whether the attorney of record for H. Glen Wood was present in court at the time of the confirmation of the Master's sale or was notified of such hearing in accordance with said rule, and there is no proof nor offer of proof in the instant suit to show that said attorney was not present in court at said time or that he was not so notified. It therefore follows, under the authorities above cited concerning the presumption in favor of an order, judgment or decree of a court of general jurisdiction, that it must be presumed that Rule 7 of the Circuit Court of Jefferson County, even if applicable, which respondents deny, was duly complied with in connection with the confirmation of the Master's sale, there being nothing in the record herein to show the contrary.

At the close of the trial and by way of rebuttal evidence, petitioners made the following offer of proof (R. 192):

> "Mr. Murray: I will offer to prove by this witness that none of the plaintiffs in this cause nor their intestate, William C. Wood, had any notice of any kind or character of any action taken or proceedings had in cause No. 35-2316, chancery, in the Circuit Court of Jefferson County, Illinois, following the 5th day of September, 1936. And I offer to prove the same by each of the plaintiffs."

An objection to this offer was sustained and the tender denied, but even if the offer had been received, no lack of compliance with Rule 7 of the Circuit Court would have been shown, since no offer was made to prove that the attorney for H. Glen Wood (the only defendant who entered any appearance in the case) was not present in court at the time of the confirmation of the Master's sale or that he was not notified of such hearing in accordance with said rule. Said offer was the only one made by petitioners herein during the trial of this cause in an attempt to show a noncompliance with said Rule 7, and, for the reasons we have already set out, the offer was entirely insufficient to show a failure to comply with that rule.

IV.

Respondents Other Than the Bank Were and Are Bona Fide Purchasers.

On March 3, 1938, First National Bank of Woodlawn, Illinois, executed an oil and gas lease to Kingwood Oil Company covering the land here involved and another 40-acre tract adjoining it on the north, the lease being for a term of five years from its date and as long thereafter as oil, gas, casinghead gas, casinghead gasoline or any of them is produced from the leased premises (Defts. Ex. 26,

R. 315, 235, 166). The consideration for the lease was $11.00 an acre. The lease was not delivered on that day, but was attached to a draft drawn on Kingwood Oil Comuany for $880.00, the purchase price, and was forwarded by First National Bank of Woodlawn to another bank at Effingham, Illinois, for collection (R. 159-162; Defts. Ex. 27, R. 315, 169). After the lease was executed and prior to the delivery of it and the payment of the consideration for the lease, Kingwood Oil Company, through one of its employees in its land department, examined the public records at the Jefferson County Courthouse with reference to the title to the leased premises. Because of the short term of the draft and of the fact that the abstracters in Jefferson County were then so busy, the company could not procure an abstract of title to be made and have it examined before the due date of the draft. From such inspection of the public records, the company learned about said foreclosure suit on the land here involved and procured a complete transcript of the record in said suit, in the form of photostatic copies of all the original court files in the case, and submitted said transcript to the law firm of Scholfield & Purdunn, of Marshall, Illinois, for examination. Said firm, after examining the transcript, wrote an opinion to Kingwood Oil Company on March 11, 1938, approving said foreclosure proceeding and the title of First National Bank of Woodlawn to the land here involved and to the other tract included in the same lease. In this title opinion reference was also made to another foreclosure suit and a partition suit, neither of which affected the land involved in the instant case but pertained only to the other 40-acre tract also covered by said lease. Kingwood Oil Company withheld payment of the draft until receipt of said title opinion, which was in its possession when it paid the draft on March 18, 1938, and received delivery of said oil and gas lease. The company relied on said opinion in paying the draft and accepting

the lease (R. 163-167, 169-171; Defts. Ex. 27, 28 and 29, R. 315-318, 169, 171). Prior to the delivery of said lease and the payment of the consideration therefor, the Kingwood Oil Company had no notice of any claim to the land here involved on the part of anyone other than First National Bank of Woodlawn (R. 163-164, 166).

On August 17, 1938, Kingwood Oil Company executed and delivered to Alfred J. Williams an assignment of an overriding royalty interest in said lease and other leases amounting to an undivided one-sixteenth of the lessee's seven-eighths working interest in the oil, gas, etc. (R. 242; Defts. Ex. 35, R. 320, 175). The consideration for the assignment was the making of a loan of $150,000 by said Alfred J. Williams to Kingwood Oil Company. The loan was made on August 17, 1938, the same day on which the assignment was executed (R. 173-175).

On June 14, 1941, Kingwood Oil Company assigned to James F. Breuil an undivided one-fourth interest in said oil and gas lease (Defts. Ex. 31, R. 318, 172). The consideration for said assignment was $1,000 and was paid by Breuil to Kingwood Oil Company on June 18, 1941, at which time the assignment was delivered to him. Before receiving the assignment and paying the consideration for it, Breuil had the title to the leased premises examined by his attorneys, who gave him an approval on the title of the bank to the land in question. At the time of the delivery of the assignment and the payment of the consideration for it, Breuil had not heard or been advised of any claim on the part of plaintiffs herein to the land involved in this suit, nor heard at that time of any claims to said land on the part of anyone other than First National Bank of Woodlawn, nor had he heard at that time of any claims adverse to Kingwood Oil Company (R. 172-173; Defts. Ex. 32, R. 319, 172).

On June 14, 1941, Kingwood Oil Company executed and delivered to Walter Duncan an assignment of an un-

divided one-fourth interest in said oil and gas lease (R. 245; Defts. Ex. 38, R. 321, 181) for a consideration of $1,000 paid by Duncan to Kingwood about the same day. Before receiving the assignment and paying the consideration for it, he inquired of the legal department of Kingwood Oil Company whether the title was all right. Prior to the delivery of the assignment to him and prior to his paying the consideration for it, Duncan had not learned or been advised of any claims on the part of plaintiffs herein to the land involved in this suit, nor had he learned or been advised at that time that anyone was making any claims to the land adverse to the title of the bank (R. 180-181).

On July 7, 1941, Kingwood Oil Company executed and delivered to R. J. Fryer and R. F. Rateliff, who were copartners doing business under the name and style of Fryer & Rateliff, an assignment of an undivided one-fourth interest in said lease, the assignment being received by them as copartners. In consideration for this assignment, Fryer & Rateliff drilled the discovery well on the leased premises at a cost to them of about $4,000. Prior to their drilling of said well and prior to the execution and delivery of the assignment to them, Fryer & Rateliff understood that the legal department of Kingwood Oil Company had examined the title to the leased premises and had approved it. Prior to the time the assignment was delivered to them and prior to the time they drilled the well, Fryer & Rateliff had not learned or been advised of any claim on the part of plaintiffs herein to the land involved in this suit or of any claim of title to said land by anyone other than the bank (R. 175-177, 275; Defts. Ex. 36, R. 320, 177).

On July 11, 1941, Alfred J. Williams and wife executed and delivered to Roy Powers an assignment of an overriding royalty interest amounting to an undivided one-sixty-fourth of the lessee's seven-eighths working interest

in the oil, gas, etc., in said oil and gas lease (R. 278; Defts. Ex. 40, R. 321, 182-193). This assignment was made to Powers in consideration for his services in arranging to have a well drilled on the leased premises. He procured Fryer & Ratcliff to drill the well and took the assignment of the overriding royalty interest in payment for his work in effecting the deal to get the well drilled (R. 182-183).

On July 14, 1941, R. J. Fryer and R. F. Ratcliff and their respective spouses assigned to Roy Powers an undivided one-eighth interest in said oil and gas lease (R. 280; Defts. Ex. 33, R. 320, 187), which interest was in turn assigned on July 15, 1941, by Roy Powers and wife to Kingwood Oil Company (R. 283; Defts. Ex. 34, R. 320, 188).

On June 26, 1941, the bank executed and delivered to E. A. Obering a mineral deed covering an undivided one-half interest in the oil and gas underlying and that might be produced from the land in question and the forty-acre tract adjoining it on the north. The consideration for this deed was $3,000 and was paid by Obering to the bank either on the date of the deed or the day before. When receiving the deed and paying the consideration for it Obering relied upon Kingwood's examination of title and its approval of title. At the time said mineral deed was delivered to him and prior to his paying the consideration for it, Obering had not learned or been advised that any of the plaintiffs in this case were making any claims to the ownership of the land involved in this suit or were claiming any right of redemption thereof, or that anybody else was asserting any claim to said land adverse to the title of the bank (R. 177-178, 285; Defts. Ex. 37, R. 321, 178).

On June 26, 1941, E. A. Obering and wife executed and delivered to Walter Duncan a mineral deed covering an undivided one-fourth interest in the oil and gas underlying and that might be produced from the land in question

and the said adjoining forty-acre tract, for a consideration of $1,650, paid by Duncan to Obering on the same day. At the time of the delivery of this deed and the payment of the consideration therefor, Duncan had not learned or been advised of any claim to said land on the part of plaintiffs herein or of any claim to the land adverse to the title of the bank (R. 181-182, 288; Defts. Ex. 39, R. 321, 182).

The statement of petitioners in their supporting brief (p. 36) that the foreclosure proceedings were not regular on their face is, we submit, without any foundation whatever in the record herein, and petitioners point to nothing which tends, in the slightest degree, to support such statement.

In the opinion of the State Supreme Court in this cause it is stated that "The foreclosure proceeding appeared on its face to be regular and the deeds executed by the master to have been fully authorized by court action."

The record in the foreclosure suit showed that the Court had full and complete jurisdiction of all the parties and of the subject matter of the action; that a decree of foreclosure in regular form had been duly entered; that the Master had duly advertised the sale, and that at the time and place stated in the notice of sale he had sold the mortgaged premises at public auction to the respondent bank as the highest and best bidder at the sale; that no objection of any kind had been filed to the sale or to the Master's report thereof; that the sale had been duly approved and confirmed by the court, and that a master's deed in regular form had been duly issued to the bank and recorded. Nothing appeared in the foreclosure suit or in any of the other public records which even tended to show that H. Glen Wood, or anyone other than the Bank, had made a bid at the Master's sale, or that any of the defendants in the foreclosure suit, or any of the petitioners herein were asserting any claim what-

ever to the premises in question. The bank was in possession of the property and had been at all times subsequent to some date in February, 1938, which was prior to the time any of the respondents, other than the bank, purchased their respective interests. There is not a scintilla of evidence in the record herein which in the slightest degree tends to show that the respondents other than the bank had at the time of their respective purchases any notice, either actual or constructive, that H. Glen Wood had made a bid at the Master's sale, or that any of the defendants in the foreclosure suit or any of the petitioners herein claimed any right, title or interest in the premises in question.

On page 37 of their brief herein, petitioners refer to the title opinion of March 11, 1938, which Kingwood Oil Company obtained from Messrs. Scholfield and Purdunn and attempt to give the impression that because this opinion was rendered eight days after the execution of the oil and gas lease from the respondent bank to Kingwood Oil Company, said Company did not rely upon the public records and the record in the foreclosure suit in purchasing the lease.

We have hereinbefore set out under this proposition the facts in detail concerning the purchase of said lease by Kingwood Oil Company, its investigation of the title, its payment of the consideration for the lease, and the want of notice to it of any claim to the land here involved on the part of anyone other than the respondent bank, which undisputed facts appearing in the record herein entirely refute petitioners' implications that Kingwood Oil Company was not a bona fide purchaser of its lease and that it did not rely upon the public records and the record in the foreclosure suit in making such purchase.

Respondents respectfully submit that the facts hereinbefore set out under this proposition, and appearing in

the record herein, show that the respective purchases by the respondents other than the bank were each made in good faith, for a valuable consideration, and in full reliance upon the public records and the record in said foreclosure suit and without any notice whatever of any claim on the part of petitioners herein, or any or either of them, to any right, title or interest in the premises in question or to any right of redemption thereof, and that such facts abundantly support the trial court's finding that the respondents other than the bank were and are bona fide purchasers for value and without notice of the petitioners' claims.

V.

Petitioners Were Guilty of Laches.

The petitioners herein were all parties to the foreclosure suit and were duly served with process. They were required to follow the course of the proceeding and were bound to know that the Master made a report on October 1, 1936, that the property had been sold to the respondent First National Bank of Woodlawn. Although they had ample opportunity to do so, they filed no objections to the report of sale, but allowed the sale to be confirmed without protest. There is no showing of any kind, either in the pleadings or in the evidence in this case, that petitioners were in any manner misled or prevented from exercising their right of redemption within the time and in the manner provided by statute; neither is there any allegation or proof explaining or excusing their failure and neglect to redeem from the sale within the statutory period. They had a whole year from the date of the Master's sale in which to redeem by paying merely the debt, interest and costs, which was the amount of the bank's bid.

The defenses of laches, acquiescence and abandonment were especially pleaded in the answers of respondents (R.

27-98). The record in this case conclusively shows that the petitioners slept upon their alleged rights and were barred from equitable relief. The record also shows that the Master's sale was held on September 5, 1936; that not until September 2, 1941, did the petitioners tender the redemption money to the Master, and that this suit was not filed until September 5, 1941, which was exactly five years from the date of the Master's sale.

The record further shows that neither H. Glen Wood nor any of the other petitioners did one solitary thing after the date of the sale to assert the claims which they make in the instant suit or to protect any rights or interests which they may have had in connection with the foreclosure suit. For five long years they sat by in total inaction and in utter silence until September, 1941, following the discovery of oil on the lands in question in the preceding July.

Nowhere in this case have petitioners, by way of excuse or explanation for their gross laches, pointed out one single act or thing that was done or attempted to be done by H. Glen Wood, or any of the other petitioners herein, during the five-year period from September, 1936, to September, 1941, either to protect their alleged rights or to give notice to respondents or to anyone else of their alleged claims.

The petition for certiorari and supporting brief herein echo and re-echo with the cry of "no notice," but it is to be noted that nowhere do petitioners make the slightest mention of the true facts conclusively shown by the record in this case, from which H. Glen Wood and the other petitioners were necessarily put on notice and inquiry which would have led to immediate full knowledge that the sale had been reported as made to the respondent Bank, followed in due course by a Master's deed to the mortgaged premises, the filing of the Master's report of conveyance and the approval thereof by the Court.

The record in this case discloses that all the petitioners, except H. Glen Wood, were defaulted in the foreclosure suit, and further shows that H. Glen Wood was advised by the Master in Chancery, at the latter's office, immediately following the sale, and in the presence of Curtis Williams, the attorney for the Bank, that if he failed to make his bid good the Master was going to accept the bid of the Bank and issue the certificate of sale and report the sale to the Bank; the record further discloses that H. Glen Wood then stated that that was all right with him (R. 146, 154). The testimony of the Master and of Curtis Williams as to the conversation just referred to was not denied by H. Glen Wood, and no attempt was made to refute the testimony of these witnesses, although H. Glen Wood took the stand in rebuttal (R. 192). Furthermore, the record discloses that on September 21, 1936, the Master wrote a letter to H. Glen Wood, again advising him that he would have to pay the amount of his bid by the first of October (R. 222-223, 133), and this letter was received by him on September 22, 1936 (R. 133). Most certainly, under these circumstances, H. Glen Wood is estopped to assert that he was not advised and not notified that the premises were to be sold to the Bank.

The evidence shows that following the execution of the Master's deed to the Bank, and some time during the latter part of February, 1938, the defendants in the foreclosure suit voluntarily surrendered possession of the property to the Bank (R. 157); that the Bank was at all times thereafter in full and exclusive possession of the property, paying the taxes thereon and improving the same (R. 157-159), undoubtedly with the full knowledge of petitioners. The record also shows that during the entire time from the filing of the foreclosure suit to the time of the trial of the instant case petitioner Grace Schmidt resided continuously in the Village of Woodlawn in Jefferson County, about three miles from the mortgaged premises

(R. 158-159), and during the same period petitioner Leaffia Howe lived within one-half mile of said premises (R. 135). The evidence further discloses that when the foreclosure suit was filed petitioner H. Glen Wood lived just across the highway from the mortgaged property and continued to live there until March, 1938 (R. 133), and must have known that the Bank had gone into possession of the property during February, 1938. The record also shows that William C. Wood, father of petitioners and one of the defendants in the foreclosure suit, was living on the mortgaged premises when that suit was filed and continued to live there during the redemption period, and that he and his son (H. Glen Wood) held a public sale some time in February, 1938, and moved off the premises (R. 131, 157).

The record in this case further shows that during the redemption period following the Master's sale on September 5, 1936, no one made any offer to the Master to redeem the premises from the sale (R. 147), and that neither during that period nor at any time thereafter did the petitioners herein, or any of the defendants in the foreclosure suit, offer to redeem the premises from the Bank (R. 158), and that from the date of the Master's deed of December 9, 1937, until the filing of this suit none of the petitioners herein, nor anyone else, questioned the Bank's right to possession of the property (R. 158).

As previously mentioned, the evidence in this case shows that after the execution of the Master's deed to the Bank and some time during the latter part of February, 1938, the defendants in the foreclosure suit (including all the petitioners herein) voluntarily surrendered possession of the property to the Bank (R. 157), and that the Bank at all times thereafter had full and exclusive possession of the property, paying the taxes thereon (R. 157-159). Such surrender of the premises to the Bank obviously constituted an acquiescence in, and a

waiver of any and all objections to, the foreclosure proceeding on the part of the defendants therein (including all the petitioners herein) and amounted to a complete abandonment of any and all claim to the property. In *Walker v. Warner*, 179 Ill. 16, which was a suit to redeem from a mortgage foreclosure sale, the Supreme Court of Illinois, in considering the abandonment of the premises by the claimant of the right of redemption, said (page 27):

> "The equity of redemption cannot be enforced where there has been an attempted foreclosure, and all parties have supposed that the foreclosure was good, and the holder of the equity of redemption has abandoned the premises and all claim to them, never paying any taxes or offering to redeem until after a series of years, when the property has passed through many hands for full value and has become valuable (*Mulvey v. Gibbons, supra*)."

Petitioners stood by for five years from the date of the Master's sale and until the property had greatly enhanced in value as the result of the discovery and production of oil thereon, and until after large expenditures of money had been made in developing the land for oil production, before filing this suit seeking to redeem from said sale. In view of the facts hereinbefore set forth, and such long and inexcusable delay, the petitioners were palpably guilty of laches and acquiescence and barred from maintaining this suit, and must be considered as having waived and abandoned any and all claim to the property in question.

For decisions of this Court on laches and as to the necessity for prompt assertion of rights or claims with reference to property which is of a speculative character or which is subject to rapid, frequent and violent fluctua-

tions in value, as in the case of an oil property, see *Twin-Lick Oil Co. v. Marbury,* 91 U. S. 587, 23 L. Ed. 328; and *Hayward v. The Eliot National Bank,* 96 U. S. 611, 24 L. Ed. 855.

Conclusion.

In conclusion, respondents respectfully submit that for the reasons hereinbefore set out, this Court is without jurisdiction to review this cause, and that the petition for writ of certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1943.

No. 550

GEORGE F. WOOD, GRACE SCHMIDT, H. GLEN WOOD, LEAFFIA HOWE,

Petitioners,

vs.

FIRST NATIONAL BANK OF WOODLAWN, ILLINOIS, A NATIONAL BANKING ASSOCIATION, KINGWOOD OIL COMPANY, A CORPORATION, ALFRED J. WILLIAMS, MILDRED F. WILLIAMS, WALTER DUNCAN, E. A. OBERING, HELEN BAILEY OBERING, JAMES F. BREUIL, R. J. FRYER AND R. F. RATCLIFFE, CO-PARTNERS DOING BUSINESS UNDER THE NAME AND STYLE OF FRYER AND RATCLIFFE: R. J. FRYER, OLIVE LOUISE FRYER, R. F. RATCLIFFE, GRACE RATCLIFFE, ROY POWERS AND NIOTAZE POWERS,

Respondents.

REPLY OF PETITIONERS TO BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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